

1-1005-6803-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of COS COMPANY, INC.,
a Delaware Corporation, d/b/a
FACT,
CREDITONESERVICES; CREDIT AMERICA
AND
SERVICES, a Minnesota business; and
Theodore Burandt, a/k/a Ted Brandt
and Ed Brandt.

FINDINGS OF

CONCLUSIONS

RECOMMENDATION

The above-entitled matter came on for hearing before
Administrative Law
Judge George A. Beck on September 1, 1992 at 1:00 p.m. in the
first floor
hearing room of the Minnesota Department of Commerce, 133 East
Seventh Street,
in the City of St. Paul, Minnesota. The hearing was concluded that
day. The
record in this matter closed on November 6, 1992 upon receipt
of the final
written memorandum from a party.

Susan E. Damon, Special Assistant Attorney General, 1100
Bremer Tower,
Seventh Place and Minnesota Street, St. Paul, Minnesota 55101,
appeared for
the Minnesota Department of Commerce. Jerry Strauss, Attorney
at Law, Suite
225, 250 Second Avenue South, Minneapolis, Minnesota
55401, appeared
representing Respondents Credit America Services and Theodore
Burandt. No
request was made by COS Company, Inc. for a hearing in this matter.

This Report is a recommendation, Not a final decision.

The Commissioner
will make the final decision after a review of the record
which may adopt,
reject or modify the Findings of Fact, Conclusions, and
Recommendations
contained herein. Pursuant to Minn. Stat. 14.61, the final
decision of the
Commissioner shall not be made until this Report has been made
available to

the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Bert McKasy, Commissioner, Minnesota Department of Commerce, 133 East Seventh Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issues in this contested case proceeding are whether or not the Respondents have engaged in a business of a credit services organization without registering with the Commissioner of Commerce, whether the Respondents have advised clients to make misleading statements when applying for credit, and whether the Respondents have violated the Cease and Desist Order issued by the Commissioner of Commerce so as to subject themselves to civil penalties.

Based upon all of the proceedings here in, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 8, 1991 Theodore Burandt rented mailbox 102 at Mail Boxes Etc., 716 Highway 10 N.E., Blaine, Minnesota 55434. Mail Boxes Etc. rents mailboxes primarily to businesses operating out of the owner's home. Mr. Burandt listed his address on the application as 7263 University Avenue, N.E. in Fridley and gave his Minnesota driver's license number as 653-792-005-584. He indicated that the mailbox would be used in connection with two firms namely P.F.H. and CAS. He also indicated that mail would be received for a Tom Larson. Mr. Burandt listed his home address as 7401 Old Central Avenue, N.E. (Ex. 1, 2.)

2. On January 22, 1992 Mr. Burandt rented a second mailbox, no. 201 at Mail Boxes Etc. He indicated that mailbox no. 201 was going to be for his personal use and for the business use of a firm called CAS. He again listed his Minnesota driver's license number as 653-792-005-584. (Ex. 3, 4.) The Minnesota Department of Public Safety has no record on file for the driver's license number given by Mr. Burandt in his applications for a mailbox. (Ex. 5.) the Department's records do show that Theodore Burandt, date of birth July 5, 1943, held a driver's license with a number of B-653-792-005-534. (Ex. 6. The Department's record's indicate that Mr. Burandt's driver's license expired on July 5, 1986 and lists his address as 6211 Riverview Terrace, Fridley, Minnesota 55432. The driver's license record describes Mr. Burandt as being 6 foot 2 inches tall and weighing 270 pounds. (Ex. 7.)

3. Pennies From Heaven, Inc. was incorporated in the State of Minnesota on May 5, 1986 with a registered office at 6211 Riverview Terrace, Fridley, Minnesota 55421 and its registered agent listed as Charlotte Burandt. (Ex. 8.) Department of Public Safety records indicate that Pennies From Heaven,

Inc. and P.F.H., Inc. located at 7362 University Avenue, N.E. in Fridley is the owner of two motor vehicles. One record lists Charlotte L. Burandt as the first secured party. (Ex. 11, 12.) Charlotte Lillian Oxendale Burandt is the wife of Theodore Burandt. (Ex. 10.)

4. On March 2, 1992 the Department of Commerce received an inquiry from the Better Business Bureau about a company called Credit America Services or C.A.S. The Better Business Bureau forwarded to the Department a document entitled, "Has the Slow Economy Ruined Your Credit?" which was on the letterhead of Credit America Services with an address listed of Suite 201, 716 N.E. Highway No. 10, Blaine, Minnesota 55434 and with a telephone number listed of (612) 649-4848. The document provides in part:

For \$39 we provide you with the four simple steps that will allow you to legally establish a new credit file. Each step takes approximately 10 minutes and you have no additional cost. This includes the free form required by the Federal Government to make file segregation legally possible.

That's right the Federal government will provide a new number that you use just like your current Social

Security number for banking and credit purposes. You will not be using a different, illegal, or phony Social Security number. The number you receive to use will be new, that's right . . . new and sent directly to you by the Federal Government!

(Ex. 14.)

5. On March 19, 1992 Department investigator Lonnie Johnson mailed a letter to Credit America Services at the Blaine address enclosing a copy of the Minnesota credit services organization law and requested a reply. (Ex. 17.)

6. On March 23, 1992 Investigator Johnson received a telephone call from a man identifying himself as "Tom" who referenced the file number contained in the March 19, 1992 letter. Tom acknowledged that Credit America Services was helping customers obtain a number with the same amount of digits as a social security number. T. 47. The investigator asked for a written response. CT March 27, 1992 Investigator Johnson received a letter on the Credit America Services letterhead. (Ex. 18.) The letter, which was unsigned, stated in part that:

The Credit America Services booklet gives people advice on how to establish a new second credit file and how to keep it segregated from the current "credit record, history, or rating" and therefor is not covered under your law. In fact people that have "good credit", as stated in the letter, also benefit from this service.

7. In early 1992 the Consumer Division of the Attorney General's Office in Minnesota received an inquiry about: Credit America Services from Kansas City, Missouri. The firm was using a Minnesota address and telephone number in Kansas City. (T. 61.) On February 27, 1992 Attorney General investigator, Donald Donahugh, called the local Minnesota number for Credit America

Services. He listened to a taped message which described how the caller could obtain the "Credit America File Segregation Plan" for \$39.

The recording described the plan in part as follows:

We will help you legally obtain from the federal government a new number that will replace your-present social security number for banking and credit purposes. With this new number you can legally establish a new segregated credit file and open new bank checking and savings accounts. Remember, this new credit file will not contain any of your present credit history no matter how bad it is. We will also show you how to quickly establish credit references for your new file. After you have established your new segregated credit file, you can go out and buy a car or house or any other major purchase all without having your present credit history stand in the way.

The message then invited the caller to leave a name and address for further information. (Ex. 21A.)

8 . On the evening of February 27, 1992 Investigator Donahugh received a telephone call at his residence in response to his inquiry about credit repair information. (T. 65.) The caller told Donahugh that his company had never advertised in Minnesota and asked how Donahugh got the telephone number. The caller agreed to send Donahugh information. (T. 66.) Subsequently, Mr. Donahugh received written information from a firm named CreditOneServices located in California which described a "file segregation service" available for a \$39 fee. (Ex. 22-26.) The only firm which Donahugh had ever contacted concerning credit repair was Credit America Services. (T. 57.)

9. Investigator Donahugh also obtained two other sets of documents in Minnesota from Credit America Services. The first was obtained from TransUnion Credit Bureau in Minneapolis and consisted of a document on Credit America Services stationary entitled "Has the Slow Economy Ruined Your Credit?" together with a "Segregation Assistance Application" which had been addressed to a Larry Ploassar in St. Louis, Missouri. (Ex. 29-30.) He also obtained the same documents from CSC Credit Services Inc. in Minneapolis. (Ex. 32-34.)

10. The Office of the Attorney General filed a consumer fraud lawsuit against Theodore Burandt, Credit America Services and CreditOneServices. The Summons and Complaint was served on May 1, 1992 at 5570 Matterhorn Drive, Fridley, Minnesota on an individual who identified himself as Jim Oxendale. Mr. Oxendale told Mr. Donahugh that Theodore Burandt was living at 5570 Matterhorn Drive. A vehicle present at that resident was registered to "P.F.H., Inc.". (T. 83., Ex. 12.)

11 . As of August 31, 1992 Credit America Services' local telephone number was still in operation. Investigator Donahugh called this telephone number on August 7, 10, and 13 of 1992. Each time he heard the same recorded message he had heard on February 27, 1992. (T. 84-85.) (Finding of Fact

No. 7) Investigator Johnson placed nine calls to the Credit America Services' number in August of 1992. When he called early in August of 1992, he heard a recorded message substantial similar to that recorded by Investigator Donahugh on February 27, 1992. (Finding of Fact No. 7) The message invited the caller to leave a message for information on how, for a \$39 fee, the caller could have "the four simple steps you need to follow to have file segregation working for you in less than 30 days." (Ex. 19A.) When Investigator Johnson called later in August, he heard only the portion of the tape inviting the caller to leave a message. (T. 53.)

12. As of September 1, 1992 Respondent Theodore Burandt was still renting mailbox no. 201 at Mail Boxes Etc, 716 Highway 10 N.E. in Blaine, Minnesota and was still receiving mail at that location - addressed to C.A.S. (T. 26-27.)

13. Neither Credit America Services or Theodore Burandt or Ted Brandt or Ed Brandt has ever filed an application or been approved for registration as a credit services organization in the State of Minnesota. (Ex. 15-16.)

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Commissioner of Commerce and the Administrative Law Judge had jurisdiction in this matter pursuant to Minn. Stat. 45.027, subd. 5 and 14.50.

2. That the Department of Commerce has fulfilled all relevant, substantive, and procedural requirements of law or rule.

3. That the Department of Commerce has given proper notice of the hearing in this matter as required by law.

4. That Respondent's Credit America Services and Theodore Burandt made a timely Request for Hearing in this matter. Respondent COS Company, Inc. d/b/a CreditOneServices made no request for a hearing.

5. That pursuant to Minn. Stat. 332.54, subd. 1:

It is unlawful for any credit services organization to offer, advertise, or execute, or cause to be executed by a consumer any contract in this state unless the credit services organization at the time of the offer, advertisement, sale or execution of a contract has been properly registered with the commissioner. The commissioner may charge the credit services organization a reasonable fee not exceeding \$100 to cover the cost of filing.

6. That a "credit services organization" is defined by Minn. Stat. 332.52, subd. 3(a) to include:

any person that, with respect to the extension of credit by others, sells, provides, performs, or represents that the person will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

- (1) improve a buyer's credit record, history, or rating;
- (2) obtain an extension of credit for a buyer; or
- (3) provide advice or assistance to a buyer with regard to either clause (1) or (2).

7. That the Respondents are a credit services organization within the meaning of Minn. Stat. 332.52, subd. 3.

8. That the Respondents have not registered with the Commissioner of

Commerce as a credit services organization.

9. That the Respondents have offered and advertised contracts in the State of Minnesota.

10. That Minn. Stat. 332.56, subd. 1 (3) provides that a credit services organization cannot:

to make, any make, counsel, or advise any buyer
buyer's credit statement with respect to a
credit capacity that worthiness, credit standing, or
should be known by is untrue or misleading or that
be untrue or the exercise of reasonable care to
agency or to any misleading to at credit reporting
buyer or to person who has extended credit to a
a buyer is applying for an extension of credit;

11. That the Respondents have advised
buyers to make misleading
statements when applying for credit in violation of Minn.
Stat. sec. 332.56,
subd. 1(3).

12. That under Minn. Stat. 45.027,
subd. 6 the Commissioner of
Commerce may impose a civil penalty not to exceed \$2,000
per violation upon a
person who violates Chapter 332 or any order issued under
that Chapter.

13. That the Respondents violated the
Commissioner's Cease and Desist
Order issued May 28, 1992 by offering its file
segregation plan through its
Minnesota telephone number in August of 1992.

Based upon the foregoing Conclusion, the
Administrative Law Judge makes
the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED: that the
Commissioner of Commerce make
the Cease and Desist Order in this matter permanent
and impose an appropriate
civil penalty upon the Respondents.

Dated: December 1, 1992.

GEORGE A. BECK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped; Transcript prepared by Jeffrey J. Watczak

MEMORANDUM

In order to prevail in this contested case proceeding , the Department of Commerce must show that the Respondents operated a credit services organization in Minnesota without registering with the Commissioner of Commerce and that the organization offered, advertised, or executed a contract in Minnesota. In its posthearing submission the Respondents conceded that they are a credit services organization as defined in Minnesota Law and they further conceded that they *are not registered with the Commissioner of Commerce. The Respondents did argue however that they had not offered, advertised, or executed, or cause to be executed, any contract with a consumer in this state .

The Respondents acknowledged that they were located geographically in Minnesota by way of a mailing address and telephone number. They argued that customers were notified of their service, "by a process other than by a phone message system conceded to be located physically within Minnesota." They argued that the offer of the services was made prior to calling the Minnesota telephone number which they suggest was merely provided to obtain final details. They suggest that no advertisement was made in Minnesota since that was done in another manner presumably by a mailing to out-of-state residents. Finally, the Respondents argue that there was no showing that the purchased materials were sent from Minnesota and that only this act would be the execution of sales contract.

The Department points out however that the recorded telephone messages which were played within the State of Minnesota do not contain merely "final details". /As Finding of Fact No. 7 indicates, the recorded message is an advertisement and contains an offer. It states that for \$39 the Respondents will help the caller obtain a new number to replace the caller's present social security number for credit purposes. Even though a potential customer

may have received a written communication from the Respondents before calling the Minnesota telephone number, this does not make the telephone communication to the consumer any less of an offer or advertisement. Additionally, the calls from within Minnesota by Department (or Attorney General investigators clearly constituted the offer of services to Minnesota residents. The record shows that the Respondents had no reluctance to provide service to Minnesota residents. As Finding of Fact No. 8 indicates, an investigator who called the Minnesota telephone number was provided written information offering the same services described in the telephone message for \$39. Although this information was mailed from California, it was clearly the result of an offer or advertisement made in Minnesota.

The Respondents suggest that the written solicitation contained in this record (see e.g. Finding of Fact No. 4), which contained the Respondents' Minnesota address and telephone number, may have been mailed to potential customers from outside the State of Minnesota. The record does not indicate from where they were mailed. The Department argues that the words "in this state" in Minn. Stat. 332-54, subd. 1 should be construed to include offers and advertisements either originating in this state or inviting acceptance in this state. The Department points out that other consumer protection statutes are so construed. (See e.g. Minn. Stat. 80A.27, subd. 4 Minn. Stat. 80C.19, subd. 3) If the statutory language were construed as urged by the Respondents, the Department would be without authority to enforce its credit services organization law against a business located physically within

Minnesota but which directed its marketing efforts towards nonresidents. It is unlikely that the legislature intended such a result. Minn. Stat. 645.16(3) and (6). Other states have extended their jurisdiction in a similar fashion. State by Abrams v. Camera Warehouse, 496 N.Y.S.2d 659, 660 (N.Y. Sup. Ct. 1985); Brown v. Market Development Inc. 322 N.E.2d 367, 372 (Ohio C.P. 1974).

The Department has also established, based upon this record, that the Respondents have advised buyers to make misleading statements when applying for credit contrary to Minn. Stat. 332.56, subd. 1(3). As a part of its plan the Respondents advised buyers to use federal government identification numbers in place of their social security number when applying for credit. (Finding of Fact No. 7) By using a different number in place of the social security number on a credit application, a consumer would clearly mislead a potential creditor about the buyers credit standing. The Respondents are in effect counseling a buyer to hide his or her true credit history. This constitutes advising a buyer to make a statement about his or her credit that is untrue or misleading when applying for an extension of credit contrary to the statute.

The evidence in the record also establishes that the Respondents have ignored the May 28, 1992 Cease and Desist Order issued by the Commissioner. That Cease and Desist Order directed the Respondents to cease its operations in Minnesota pending registration. However, as Finding of Fact No. 11 indicates, when the Respondents' local telephone number was called in August of 1992, it had the same recorded message as it had in February of 1992. It again advised the caller on how, for a \$39 fee, the caller could learn how to have file segregation working for him in less than 30 days. Additionally, the Respondents continued to maintain a rented mail box in Blaine, Minnesota at least through September 1, 1992. The statute therefore authorizes the

Commissioner to make the Cease and Desist Order permanent and to subject the Respondents to appropriate civil penalties.

GAB